IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 28833 of 2006(G)

CMA.4/2006 of PRINCIPAL SUB COURT,PARAVUR
OS.389/2005 of MUNSIFF COURT,ALUVA
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PETITIONER:

K.O. ANTONY, S/O.OUSEPH,
AGED 65 YEARS, KOZHIKKADAN HOUSE,
VADAKKUMBHAGOM VILLAGE, KANJOOR,
ERNAKULAM DISTRICT.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT:

K.O. PAPPU, S/O.OUSEPH,
KOZHIKKADAN HOUSE, VADAKKUM BHAGOM VILLAGE,
KANJOOR, ERNAKULAM DISTRICT.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PLAINT DATED 8.9.2005 IN O.S.NO.389 OF 2005 ON THE FILE OF THE MUNSIFF'S COURT, ALUVA.

EXT.P2(a): COPY OF THE REPORT DATED 23.9.2005 FILED BY THE ADVOCATE COMMISSIONER IN O.S.NO.389/2005 ON THE FILE OF THE MUNSIFF'S COURT, ALUVA.

EXT.P2(b): COPY OF THE ROUGH SKETCH FILED BY THE ADVOCATE COMMISSIONER IN O.S.NO.389/2005 ON THE FILE OF THE MUNSIFF'S COURT, ALUVA.

EXT.P3: COPY OF THE DOCUMENT NO.1544/96 OF THE SRO, SREEMOOLANAGARAM.

EXT.P4: COPY OF THE WRITTEN STATEMENT DATED 21.11.2005 FILED BY THE RESPONDENT IN O.S.NO.389/2005 ON THE FILE OF THE MUNSIFF'S COURT, ALUVA.

EXT.P5: COPY OF THE ORDER DATED 3.12.2005 PASSED BY THE LEARNED MUNSIFF IN O.S.NO.389/2005 DISMISSING THE INJUNCTION APPLICATION.

EXT.P6: COPY OF THE ORDER DATED 20.7.2006 PASSED BY THE LEARNED PRINCIPAL SUB JUDGE IN C.M.A.NO.4/2006.

TRUE COPY

P.A.TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28833 OF 2006

Dated this the 2nd day of July, 2007

JUDGMENT

Ext.P5 order of the learned Munsiff dismissing the application for temporary injunction filed by the petitioner and Ext.P6 order of the learned Sub Judge dismissing an appeal which was preferred against Ext.P5 are under challenge in this Writ Petition under Article 227 of the Constitution initiated by the plaintiff in the suit.

2. Heard Sri.George Cherian, counsel for the petitioner. He would place before me the consent issued by the Pollution Control Board subsequent to the Writ Petition, for my perusal. Even though Sri.George has addressed me extensively, I do not find any warrant to invoke the supervisory jurisdiction under Article 227. The Writ Petition is for setting aside Exts.P5 and P6. It cannot be said that those orders can be branded as perverse or that they violate law, statutory or settled. I am also not impressed by the submission of the learned counsel that those orders results in gross injustice or failure of justice. Not that, I do not find any merit at all in the submissions which were addressed by the learned counsel regarding the propriety of the view taken by the learned Munsiff and confirmed by the appellate court. But what I mean to say is only that these orders can not be branded as so wholly unreasonable

as to warrant correction. Obviously, it was noticing that position that this court while admitting the Writ Petition directed maintenance of status quo as seen from Ext.P2 (a) report and to ensure that there is no obstruction on the usage of the road in question by the petitioner, I am of the view that the above order directing maintenance of status quo and restraining the parties from making obstructions can continue till such time as the suit is disposed of by the trial court. Even as I repel the challenge of Exts.P5 and P6, in view of the contours of this Court's jurisdiction under Article 227, I dispose of the Writ Petition issuing the following directions:

The parties will maintain status quo as found by the commissioner in Ext.R2(a) report and the respondent will not obstruct the usage of the road in question till such as the suit is disposed of. The court below shall dispose of the suit at its earliest and uninfluenced by any of the findings or observations contained in the orders which are impugned in this case. The learned Munsiff will treat those findings and observations as provisional and made only for the purpose of the interlocutory proceedings. The suit shall be decided on the basis of the evidence which comes on record during the trial at any rate within three months of receiving copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

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